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No. 88-1028

In The

Supreme Court of the United States

October Term, 1988

MOIRA Q. SCANLON,

Petitioner,

v.

HOWARD M. SCHRINAR, Commissioner of Public Lands, State of Wyoming and AMOCO PRODUCTION COMPANY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WYOMING

RESPONDENT HOWARD M. SCHRINAR'S BRIEF IN OPPOSITION

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January, 1988

10 pp

QUESTION PRESENTED

Was the Wyoming Supreme Court correct in holding that it had no jurisdiction to consider a petition for review of agency action because the petitioner failed to file her petition for review within the time limit specified by Rule 12.04, Wyoming Rules of Appellate Procedure?

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Respondent Howard M. Schrinar, Commissioner of Public Lands, State of Wyoming, (Commissioner), respectfully asks the Court to deny the petition for a writ of certiorari for the reasons set forth below.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

1. Wyoming Rules of Appellate Procedure, Rule 12.04:

In a contested case, or in a non-contested case where a statute places a time limit on appeal, the petition for review shall be filed within thirty (30) days after written certified notice to all parties of the final decision of the agency or denial of the petition for a rehearing, or, if a rehearing is

held, within thirty (30) days after written, certified notice to all parties of the decision thereon. . . .

2. Rules and Regulations Governing Leasing of Subsurface Resources, Board of Land Commissioners, Section 9, *Rentals*:

Annual rentals on all leases shall be payable in advance for the first year and each year thereafter. No notice of rental due shall be sent to the lessee. If the rental is not paid on or before the date it becomes due, notice of default will be sent to the lessee, and a penalty of $0.50 will be assessed.

The lessee is not legally obligated to pay either the rental or the penalty, but if the rental and penalty are not paid within 30 days after the notice of default has been received, the lease will terminate automatically by operation of law.

STATEMENT OF FACTS

Petitioner failed to pay her advance rental on State Oil & Gas Lease No. 83-00040 when it came due, January 1, 1986. The lease provided, at Section 1 (c):

> Annual rentals on all leases shall be payable in advance for the first year and each year thereafter. No notice of rental due shall be sent to the lessee. If the rental is not paid on or before the date it becomes due, notice of default will be sent to the lessee, and a penalty of $0.50 per acre for late payment will be assessed.
>
> The lessee is not legally obligated to pay either the rental or the penalty, but if the rental and penalty are not paid within thirty

> (30) days after the notice of default has been received, the lease will terminate automatically by operation of law.

See also, Rules and Regulations Governing Leasing of Subsurface Resources, Board of Land Commissioners, Section 9, *Rentals.*

The Commissioner's office sent to Petitioner, via certified mail, postmarked January 23, 1986, notice of her default in making her advance rental payment. On February 10, 1986, the certified letter was returned to the Commissioner's office by the United State Postal Service marked "unclaimed".

A portion of the oil and gas rights covered by State Oil and Gas Lease No. 83-00040 were leased to Respondent Amoco Production Company by the State of Wyoming, Board of Land Commissioners on August 2, 1986.

In January, 1987 the Commissioner received the following letter from Petitioner:

> Dear Sir:
>
> Enclosed is a check for $3,840.00 for the taxes due plus late penalty charges on Lease #83-00040 Parcel #699 in Sheridan County, Wyoming. This check should cover total owed to the state.
>
> I thank you for your patience in the matter and apologize for my own tardiness in attending to it.
>
> Respectfully,
> Moira Q. Scanlon
> 32 Seaver St.
> E. Taunton, Ma. 02718

The Commissioner's office returned Petitioner's check to her on January 15, 1987. On February 5, 1987, Petitioner's attorney resubmitted the same check to the Commissioner on behalf of Petitioner and requested that the Commissioner "reinstate her lease". On February 12, 1987, the Commissioner's attorney returned the check to Petitioner's attorney and informed him that the terminated lease would not be reinstated.

Petitioner filed her petition for review in the First Judicial District Court of Wyoming on March 10, 1987.

REASONS WHY THE WRIT SHOULD BE DENIED

The writ should be denied because the decision below is based on independent and adequate state grounds. In addition, the issue is not of sufficient importance to merit review by this Court.

First, it is clear from the opinion of the Wyoming Supreme Court that the case was decided on the basis of a state rule of procedure. *Scanlon v. Schrinar*, 759 P.2d 1243, 1246 (Wyo. 1988). The court found that it had no jurisdiction to hear her case because the petition for review was untimely filed under Rule 12.04, Wyoming Rules of Appellate Procedure (W.R.A.P.). The requirement to timely file a petition for review in Wyoming is jurisdictional. *Curtis v. Center Realty Company*, 502 P.2d 365 (Wyo. 1972). This requirement has been applied consistently by the Wyoming Supreme Court. See *Department of Revenue & Taxation v. Irvine*, 589 P.2d 1295 (Wyo. 1979), *Stagner v. Wyoming State Tax Commission*, 642 P.2d 1296 (Wyo. 1982). There is a legitimate state interest in establishing time limits for requesting judicial review of agency actions. Without such time limits, there would be no finality of agency actions.

Second, this is a simple contract case which raises no important legal issues. Petitioner clearly failed to pay her rental when due and then failed to pick up her certified mail. By the terms of the contract, the contract automatically terminated. Petitioner then implored the Commissioner to restore the contract by tendering her rental payment over one year late. The Commissioner was under no obligation, nor was it legally possible for him to restore her terminated lease.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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